

UNITED STATES DISTRICT COURT

for the

Western District of Washington

In re DMCA Subpoena to Cloudflare, Inc.

Plaintiff

v.

Defendant

Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Cloudflare, Inc.

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:
See description in Exhibit A, attached thereto

Place: Specialized Legal Services
112 Bryant Street, #120
San Francisco, CA 94103

Date and Time:

12/24/2020 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk_____
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____
Will Co. Ltd. _____, who issues or requests this subpoena, are:
Spencer D. Freeman, Freeman Law Firm, Inc., 1107 1/2 Tacoma Ave. S., Tacoma, WA 98409; 253-383-4500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit A

DOCUMENTS TO BE PRODUCED

For the period January 1, 2017 through the present, produce all documents¹ and account records that identify the person(s) or entities that caused the infringement of the material described in the attached Exhibit B DMCA notifications to the DMCA Agent for Cloudflare, Inc., and/or who unlawfully uploaded Will Co. Ltd's copyrighted works at the URLs listed in the notifications, including but not limited to identification by names, email addresses, IP addresses, user history, posting history, physical addresses, telephone numbers, and any other identifying information.

¹ Definitions. The term "document" as used herein, means any and all materials falling within subparagraphs (1) through (4) of Rule 1001, Federal Rules of Evidence, including without limitation computer logs, summaries, account records, invoices, receipts, spreadsheets, charts, reports, agreements, correspondence, facsimile messages, electronic mail, memoranda, notes, data, notations, reports and records of any communications (including telephone or other conversations, interviews, conferences or committee or other meetings), letters, affidavits, statements, plans, specifications, contracts, licenses, photographs, objects, tangible things, journals, books or other records of accounts, summaries of accounts, balance sheets, income statements, bills, lists, tabulations, graphs, recordings, computer records and all other records kept by electronic, photographic or mechanical means, and things similar to any of the foregoing, however denominated.

Exhibit B

**Copies of Notifications Issued Pursuant to
17 U.S.C. § 512(c)(3) to
Registered DMCA Agent for
Service Provider Cloudflare, Inc.**



will.jp

Copyright Infringement Notice, Please React Ref ID:[HL5F88331F.EC728-2c7f-0f6c1] Contains 12 links

1 message

legal@[REDACTED]
To: abuse@cloudflare.com
Cc: legal@[REDACTED]

Thu, Oct 15, 2020 at 6:36 AM

Re: Infringing content hosted on your servers.
Number of Violations: 12
Ref: HL5F882F95,2A804-2c7f-0f6c1

Dear File Hosting Service,

The links attached below are infringing our content rights:

Owner: WILL Co., Ltd.
Address: Takehara Building 2F, 3-15-20 Roppongi, Minato-ku, Tokyo, 106-0032, Japan
Tel: +81-3-[REDACTED]
WebSite: <http://www.will-hp.jp/>
Email: [protect@\[REDACTED\]](mailto:protect@[REDACTED])

Please investigate the matter.

WILL Co., Ltd. and/or its affiliated companies (collectively "WILL") are the exclusive owners of copyrights or distribution rights in motion pictures ("WILL Property"). WILL swears under the penalty of perjury that we are the owner of the content and copyright listed below. Distribution of such content is only permitted through our official website or via an express written licensing agreement. Any other form or outlet of distribution of such content is illegal and constitutes copyright infringement. Original works owned by WILL can be seen at <https://www.dmm.co.jp/>.

The undersigned has a good faith belief that use of WILL Property in the manner described herein is not authorized by WILL or the law. The information in this notice is accurate. Under penalty of perjury, the undersigned is authorized to act on behalf of WILL with respect to this matter. Pursuant to this notification, you should immediately take steps to locate and remove and/or disable access to the infringing content that is on your system.

Please be advised that this letter is not and is not intended to be a complete statement of the facts or law as they may pertain to this matter or of WILL's positions, rights or remedies, legal or equitable, all of which are expressly reserved.

We appreciate your immediate attention to this important matter.

Sincerely,

Kenichi Yamaki
Legal Manager, WILL Co., Ltd.
Phone: +81-3-[REDACTED]
Email: [protect@\[REDACTED\]](mailto:protect@[REDACTED])

2020-10-15 13:16:37

<---Important Notice--->

Your use and access to content of this communication is strictly subjected to compliance with the terms and disclaimers expressed henceforth.

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prevail over the electronic version.

<-----List of Links----->

Link: <http://share-videos.se/auto/video/61938397/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=miad963/>

Link: <https://embed.share-videos.se/auto/embed/65947579?uid=3772>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=mide430/>

Link: <http://share-videos.se/auto/video/55009049/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=miad963/>

Link: <http://share-videos.se/auto/video/47313231/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=wanz562/>

Link: <http://share-videos.se/auto/video/48275542/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=miad963/>

Link: <http://share-videos.se/auto/video/36774430/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=ssni117>

Link: <http://share-videos.se/auto/video/50773816/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=ssni117>

Link: <http://share-videos.se/auto/video/49086821/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=wanz562/>

Link: <http://share-videos.se/auto/video/49219950/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=wanz562/>

Link: <http://share-videos.se/auto/video/49376042/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=miad963/>

Link: <http://share-videos.se/auto/video/49408644/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=miad963/>

Link: <http://share-videos.se/auto/video/49412173/?uid=13>

URL: <http://www.dmm.co.jp/mono/dvd/-/detail/=/cid=wanz562/>